IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shree Gopal. Versus Smt. Jasoda & Anr.

S.B. Criminal Misc. Petition No. 1000/2004
against the Order dated 7-7-2003 passed
by the Additional Sessions Judge, Nagaur,
in Criminal Revision No. 18/1995.

...

Date of Order: July 14, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Madha Ram Vishnoi, for the petitioner.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has assailed the order dated 7-7-2003 passed by the Additional Sessions Judge, Nagaur (for short, "the Revisional Court" hereinafter) in Criminal Revision Petition No.18/1995, whereby the revision petition filed by the petitioner against the order dated 8-3-1995 passed by the Judicial Magistrate, Nagaur (for short, "the trial Court" hereinafter) in Criminal Case No. 178/1991 granting maintenance in favour of the non-petitioners, was dismissed. By the order dated 8-3-1995, the trial Court granted maintenance @ Rs.500/- per month in favour of the non-petitioner No.1 and

@ Rs.400/- per month in favour of non-petitioner No.2. Aggrieved by the orders impugned, the petitioner has filed the instant criminal miscellaneous petition.

I have heard learned counsel for the petitioner. Carefully gone through the orders passed by the trial Court and the Revisional Court and the record of the trial Court.

It is contended by the learned counsel for the petitioner that the courts below have erred in law and on facts in granting maintenance from the date of the application. It has further been contended that as per the custom, the marriage solemnized between the parties was dissolved from 7-3-1991.

So far as granting maintenance from the date of the application is concerned, a Division Bench of this Court in Smt. Savita Sharma Vs. Shri Krishan Murari, 1990 (1) RLW 400, held that the maintenance should be granted from the date of the application and not from the date of order, more particularly in the cases where during pendency of the proceedings, no interim maintenance was allowed. In the instant case, no interim maintenance allowance was granted during the pendency of the case and, therefore, the impugned order granting maintenance from the date of application cannot be said to be erroneous or illegal.

So far as contention regarding dissolution of marriage as per the custom is concerned, there is no such

evidence led before the trial Court. Learned counsel for the non-petitioner submits that the marriage solemnized between the parties has not yet been dissolved as per the customs. Be that as it may, even if the petitioner has divorced the non-petitioner, still she is entitled for the maintenance unless she re-marries to some one else.was dissolved as per the customs.

In the circumstances, therefore, no case for interference is made out. It cannot be said that the impugned order would result in manifest injustice or abuse of process of any Court.

The criminal miscellaneous petition is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs